

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
Educational Public TV Corporation	)	
v.	)	CSR-6317-M
RCN-BecoCom, LLC	)	
	)	
Request for Carriage	)	
	)	
Educational Public TV Corporation	)	CSR-5830-M
v.	)	
RCN-BecoCom, LLC	)	
	)	
Application for Review	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: August 19, 2004**

**Released: August 23, 2004**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. Educational Public TV Corporation, licensee of noncommercial (“NCE”) television station WYDN-TV (Ch. 48), Worcester, Massachusetts (“WYDN-TV”), filed the above-captioned complaint against RCN-Becocom, LLC (“RCN”)<sup>1</sup> for its failure to carry WYDN-TV on all of its cable systems located in the Boston, Massachusetts designated market area (“DMA”).<sup>2</sup> An opposition to this petition was filed on behalf of RCN to which WYDN-TV replied.

**II. BACKGROUND**

2. Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues* (“*Must Carry Order*”), commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station’s market.<sup>3</sup> A

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<sup>1</sup>WYDN-TV filed its complaint against RCN Corporation, however, RCN indicated in its opposition that the correct cable operator name is RCN-Becocom, LLC.

<sup>2</sup>Although WYDN-TV is licensed as a noncommercial station, it is considered to be a “non-qualified” NCE station because it does not meet the qualification criteria established pursuant to Section 76.55(a) of the Commission’s rules. 47 C.F.R. § 76.55(a). It is therefore treated as a commercial station for must carry purposes. See *Frontiersvision Operating Partners, L.P., et al.*, 17 FCC Rcd 9332 (2002).

<sup>3</sup>8 FCC Rcd 2965, 2976-2977 (1993).

station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.<sup>4</sup> A DMA is a geographic market designation that defines each television market exclusive of others, based on measure viewing patterns.

### III. DISCUSSION

3. In support of its request, WYDN-TV states that because it is a non-qualified NCE television station licensed to a community in the Boston DMA, it is entitled to carriage on all cable systems within that DMA.<sup>5</sup> On January 27, 2004, WYDN-TV states that it sent a letter to RCN, requesting carriage on all RCN systems within the Boston DMA.<sup>6</sup> WYDN-TV states that RCN refused the request, by letter dated February 5, 2004.<sup>7</sup> WYDN-TV states that while it has been in communication with RCN since the denial letter, and offered to correct any signal strength deficiencies at its own expense, its carriage request has not been resolved to date. WYDN-TV states that the instant complaint was filed in order to protect its must carry rights, but that if matters are resolved with RCN regarding carriage, it will voluntarily withdraw its complaint.

4. In opposition, RCN states initially that WYDN-TV failed to note in its complaint, that during the previous election cycle: a) it twice sought and was denied carriage by RCN on its Boston system; b) the must carry complaint it filed against RCN was denied by the Media Bureau; and c) that it is currently prosecuting an application for review of that decision.<sup>8</sup> In addition, RCN notes, WYDN-TV failed to include copies of all of the relevant correspondence and communications between the two parties with respect to WYDN-TV's present request for carriage for the current election cycle.

5. RCN argues that WYDN-TV does not provide a signal of sufficient strength required to its principal headend site, as required by the Commission's rules.<sup>9</sup> In signal strength tests, RCN states that measurements of WYDN-TV's signal demonstrate a signal strength that is more than 25 dB below the -45dBm minimum signal strength established by Section 614(h)(1)(B)(iii) of the Act and Section 76.55(c)(3) of the Commission's rules.<sup>10</sup> RCN states that WYDN-TV acknowledged its lack of an adequate signal and offered to provide a good quality, baseband video signal via satellite.<sup>11</sup> RCN

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<sup>4</sup>Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station's market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. *See* 47 U.S.C. § 534(h)(1)(C). Section 76.55(e) of the Commission rules, requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. *See Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules, Order on Reconsideration and Second Report and Order*, 14 FCC Rcd 8366 (1999) ("Modification Final Report and Order"); 47 C.F.R. § 76.55(e).

<sup>5</sup>Complaint at 1.

<sup>6</sup>*Id.* at Attachment A.

<sup>7</sup>*Id.* at Attachment B. It should be noted that RCN's denial letter refers to its cable system serving the city of Boston, Massachusetts.

<sup>8</sup>Opposition at 2-3; *see also Educational Public TV Corporation v. RCN-BecoCom, LLC*, 17 FCC Rcd 9329 (2002), *app. for rev. pending*.

<sup>9</sup>*Id.* at 7.

<sup>10</sup>*Id.* at Exhibit 9 (Declaration of Danny Hartsoe, Headend Technician for RCN); *see also* 47 U.S.C. § 534(h)(1)(B)(iii) and 47 C.F.R. § 76.55(c)(3).

<sup>11</sup>*Id.* at Exhibits 4, 5 and 6.

contends, however, that its research demonstrates that the satellite feed that WYDN-TV proposes is not a retransmission of WYDN-TV's broadcast signal, including all local material, but instead the national Daystar network feed.<sup>12</sup> RCN maintains that it does not dispute WYDN-TV's right to provide, at its own cost, a good quality signal via satellite, however it asserts that it should not be obligated to accept WYDN-TV's alternate means of providing a good quality signal in this instance. RCN points out that both the Act and the Commission's rules state unequivocally that cable systems carry the signals of "local commercial television stations."<sup>13</sup> Moreover, in *Jovon Broadcasting Corp. v. RCN Corp.*, the Commission explicitly stated that the broadcaster could employ its DTV transmitter as an alternate signal delivery mechanism so long as it "transmits exactly the same content over its digital signal as is contained in its analog signal."<sup>14</sup>

6. RCN states that even if proposed satellite delivery was the signal of WYDN-TV, the station's proposal should still be rejected because site restrictions at the headend location prevent implementation of WYDN-TV's proposal.<sup>15</sup> RCN states that it is well-established that "cable operators need not employ extraordinary measures or specialized equipment" when taking signal strength measurements or when implementing alternate methods of delivering good quality signals by broadcast stations.<sup>16</sup> RCN states that it is confronted with restrictions at its South Boston headend site that preclude implementation of WYDN-TV's satellite delivery proposal.<sup>17</sup> RCN requests that the Commission should find, consistent with previous decisions, that it is not required to accept WYDN-TV's satellite delivery proposal or to take extraordinary measures to accommodate that proposal.

7. In reply, WYDN-TV argues that the fact that there was a previous proceeding involving the parties herein is irrelevant. It maintains that once WYDN-TV was able to deliver a good quality signal to RCN's headend, it was entitled to carriage.<sup>18</sup> WYDN-TV states that, without conceding the accuracy of the signal strength test performed by RCN, it has offered to deliver, at its own expense, a good quality signal through alternative means. As a result, it asserts, signal strength is not an issue.<sup>19</sup> Further, WYDN-TV states that, despite RCN's assertions, the signal that WYDN-TV proposes to deliver via satellite is that of WYDN-TV and contains the same content as that broadcast over-the-air on channel 48, with local station identification, EAS, etc.<sup>20</sup> Finally, WYDN-TV argues that RCN's contentions

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<sup>12</sup>*Id.* at 8-9.

<sup>13</sup>*Id.* at 10-11, citing 47 U.S.C. § 534(a); *Must Carry Order*, 8 FCC Rcd at 2972; 47 U.S.C. § 534(b)(3)(B) and 47 C.F.R. § 76.62(a).

<sup>14</sup>*Id.* at 11, citing 18 FCC Rcd 8145, 8147 (2003).

<sup>15</sup>*Id.* at 12.

<sup>16</sup>*Id.* at 12-13, citing *Implementation of the Cable Television Consumer Protection and Competition Act of 1992. Broadcast Signal Carriage Issues*, 8 FCC Rcd 4142, 4145 n.11 (1993) ("*Clarification Order*"); *Minority Television Project, Inc. v. AT&T Broadband, LLC*, 17 FCC Rcd 22810, 22812-3 (2002); *Continental Cablevision of Western New England, Inc.*, 11 FCC Rcd 6488, 6512-3 (1996); *Arkansas 49, Inc. v. Echostar Communications Corporation*, DA 03-4044 (rel. Dec. 22, 2003).

<sup>17</sup>*Id.* at Exhibit 9.

<sup>18</sup>Reply at 1.

<sup>19</sup>*Id.* at 2.

<sup>20</sup>*Id.*, citing Declaration of Neal Ardman.

regarding site restrictions are based upon a faulty understanding of the feed which is to be delivered.<sup>21</sup> WYDN-TV states that an attached Declaration provides all the specifics required in the way of receiving equipment, all of which will be supplied at WYDN-TV's expense.<sup>22</sup>

8. In a response to WYDN-TV's reply, RCN notes that, for the first time, WYDN-TV provided new facts about its proposed satellite delivery. RCN states that, based on this information, it would have to install a 4-foot diameter satellite dish at its headend<sup>23</sup> RCN points out that the size of this dish is identical to that in *Arkansas 49* where the Commission rejected the equipment because it could not be "physically accommodated at the operator's existing [local receive facility]."<sup>24</sup> RCN states that it has already demonstrated that it cannot install a dish of this size at its headend site due to site restrictions on the number of rooftop satellite dishes that can be accommodated and WYDN-TV failed to refute this evidence in its reply.<sup>25</sup> As a result, RCN asserts that the new facts presented by WYDN-TV do not support its allegation of RCN's "faulty understanding," but rather confirm RCN's earlier showing.<sup>26</sup>

9. There appears to be no disagreement between the parties that WYDN-TV does not provide a good quality over-the-air signal to RCN's principal headend. Instead, the issue at hand involves WYDN-TV's proposal to improve the quality of its signal by delivering the station's local, broadcast feed via satellite and providing, at its own expense, all necessary equipment. RCN has claimed not only that it cannot accommodate an additional satellite dish on the rooftop structure at its headend, but that the signal WYDN-TV proposes to deliver is the national Daystar network feed and not a retransmission of WYDN-TV's full broadcast signal. Upon review we find that the information provided by RCN is not sufficient to make a determination regarding rooftop space at RCN's principal headend. In similar cases where a cable operator has claimed insufficient space on a receive tower to accommodate an additional antenna, the cable operator would be expected to provide such evidence as proof that the tower could not bear additional wind loading; interference from insufficient spacing, additional weight; or structural or logistical factors.<sup>27</sup> RCN has not provided such specifics in this case. With regard to the issue of what signal WYDN-TV intends to deliver, WYDN-TV has flatly contradicted the allegation that it will not deliver its broadcast signal, in its entirety. As there is no evidence to contradict this claim, we will conditionally grant WYDN-TV's complaint with the proviso that delivery of a good quality signal be accompanied by the retransmission of its full, over-the-air broadcast signal.<sup>28</sup>

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<sup>21</sup>*Id.*

<sup>22</sup>*Id.*

<sup>23</sup>Response to reply at 3.

<sup>24</sup>*Id.*, citing DA 03-4044 at ¶¶ 6 and 8.

<sup>25</sup>*Id.* at 4, citing Opposition at 12-16 and Exhibit 9.

<sup>26</sup>*Id.*

<sup>27</sup>See e.g., *CTV of Derry, Inc. v. Paragon Cable*, 13 FCC Rcd 12484 (1998); *All American TV, Inc. v. Mountain Brook Cablevision*, 12 FCC Rcd 17545 (1997); *Norwell Television, LLC v. DIRECTV, Inc.*, 17 FCC Rcd 10573 (2002).

<sup>28</sup>In view of our decision today, we will dismiss the earlier proceeding brought by WYDN-TV seeking carriage on RCN's cable system as moot (CSR-5830-M). See *Educational Public TV Corporation v. RCN-BecoCom, LLC*, 17 FCC Rcd 9329 (2002), *app. for rev. pending*.

**IV. ORDERING CLAUSES**

10. Accordingly, **IT IS ORDERED**, that the must carry complaint filed by Educational Public TV Corporation (CSR-6317-M) **IS GRANTED** pursuant to Section 614(d)(3) of the Communications Act of 1934, as amended, 47 U.S.C. § 534. RCN-Becocom, LLC **IS ORDERED** to commence carriage of WYDN-TV on its cable systems serving the Boston, Massachusetts DMA sixty (60) days from the date on which WYDN-TV delivers a good quality signal to the cable system's principal headend.

11. **IT IS FURTHER ORDERED** that the signal delivered by WYDN-TV shall be the station's over-the-air signal.

12. **IT IS FURTHER ORDERED** that the application for review filed by Educational Public TV Corporation (CSR-5830-M) **IS DISMISSED** as moot.

13. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.<sup>29</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Deputy Chief, Policy Division  
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<sup>29</sup>47 C.F.R. § 0.283.